IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.E.N.PATRUDU

WRIT PETITION NO :2129 of 2005

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Dated: 1st February 2006.

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Between:

K.Kanakaiah

..... PETITIONER

AND

The Prohibition & Excise Superintendent, Karimnagar and others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.E.N.PATRUDU

W.P.NO.2129 OF 2005

ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> " Hence, for the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to pass appropriate Writ, Order or direction particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing proceedings Rc.No.126/2001/P&Ex/A1, dated 23rd March 2004, requiring the petitioner acquire requisite educational qualification for further promotion as Excise Head constable as arbitrary, unreasonable, illegal, improper, contrary to the orders passed by the Hon'ble Tribunal and set aside the same and also set aside the orders passed by the Hon'ble Administrative Tribunal dated 17-12-2004 in OA NO.6721/2004 and further direct the respondents to promote the petitioner to the post of Excise Head constable forthwith and pay all consequential benefits and pass such other order or orders as this Hon'ble court may deem fit proper and necessary in the circumstances of the case."

Aggrieved by an order of dismissal of the O.A.No.6721 of 2004, by the Andhra Pradesh Administrative Tribunal on 07-12-2004, the unsuccessful applicant therein preferred the present writ petition.

The petitioner was initially appointed as a Constable in the Excise Department and he was promoted as Head Constable in the year 1987. In the year 1988, certain disciplinary proceedings were initiated against the petitioner, the details of which are not necessary for the present purpose. As a consequence of the disciplinary proceedings, the applicant was ordered to be reverted permanently to the post of Constable. Aggrieved by the said order, the petitioner approached the Tribunal by way of O.A.No.513 of 1998. The said O.A. was allowed by an order dated 3rd September 2003, holding that the relevant Rules did not provide for a

punishment of reversion on a permanent basis and therefore, with a direction to consider the case of the applicant to the post of Head Constable, with reference to his placement in the seniority list of the Excise Constables. Consequent upon the said judgment, the 1st respondent herein issued proceedings dated March 23rd 2004, which reads as follows:

> "Keeping in view of the orders of the Hon'ble APAT in OA No.513/1998 dt. 3.9.2003 at Para No.12, the orders passed by this Office vide reference 1st cited reverting Sri K.Kanakaiah permanently as Excise Constable are hereby modified and the words "permanently" are deleted.
>
> The candidature of the individual will be considered for all future promotions on acquiring the requisite educational qualifications subject to availability of vacancies."

Aggrieved by the proceedings, insofar the proceedings indicate that 'the petitioner's case would be considered for promotion on his acquiring the requisite educational qualification', the petitioner once again approached the Tribunal by way of the present O.A. i.e., O.A.No.6721 of 2004.

The relevance of the educational qualifications is this; it appears that till 28-11-1998, the requisite educational qualification among the Excise Constables, for promotion to the post of Excise Head Constables, was a pass in VIII standard. By an amendment dated 28-11-1998, in exercise of the powers conferred under Article 309 of the Constitution, the relevant rules were amended prescribing the educational qualification as a pass in X class, for the purpose of promotion to the post of Excise Head Constable.

The learned counsel for the petitioner submitted that insistence on the acquisition of a pass in X class, on the part of the petitioner, is illegal and arbitrary. According to the learned counsel for the petitioner, since he was, in fact, promoted as Head Constable in the year 1987 itself in the normal course, he cannot be put to a disadvantage today, by virtue of an amendment of Rules, which took place in the year 1998.

We are afraid that the submission of the learned counsel for the petitioner is not well founded in law. No doubt, the petitioner was promoted as Head Constable in the year 1987, but as a matter of punishment, he was reverted as a Constable by

an order dated 03-04-1992. On such reversion, undisputedly, the petitioner will take the last rank in seniority in the category of Excise Constables in the appropriate unit. If that is the position, his turn for promotion to the next higher post, would depend upon various factors like the availability of the post, number of seniors above him competing for the available posts of Head Constables as and when the posts fall vacant, and also the eligibility of all, or some of the seniors above him for the promotion to the post of Head Constable.

Admittedly, the minimum service required to be put in by any Excise Constable seeking promotion as a Head Constable, apart from various other requirements, is a period of three years. Therefore, in view of the order of reversion dated 03-04-1992, the petitioner could not have claimed promotion before 02-04-1995. If, after 02-04-1995 and before the date of amendment of the Rules modifying the educational qualification i.e., 28-11-1998, sufficient number of posts of Excise Head Constable, were available, which could have accommodated the claims of all the eligible candidates of Excise Constables in the relevant Unit, including the petitioner, the petitioner is, undoubtedly, entitled for consideration of his case for promotion on the basis of the academic qualification, which he possesses. As can be seen from the counter, from October 1993, till October 2004, no single vacancy of Excise Head Constable, in the relevant unit, arose. In which case, the case of the petitioner, or any other person above him in seniority, could not have been considered for the promotion at all. By the time vacancies arose in the month of October 2004, relevant Rules stood amended, prescribing a higher standard of educational qualification.

In the absence of any sustainable challenge to the amendment, the petitioner cannot complain that the stipulation contained in the impugned proceedings before the Tribunal, of the 1st respondent dated 23rd March 2004, suffers from any illegality. In our view, the Tribunal reached the right conclusion that there were no merits in the O.A. We do not see any reason to interfere with the finding of the Tribunal.

For the foregoing discussion, the writ petition is dismissed. No costs.

J.Chelameswar, J

M.E.N.Patrudu, J

1st February 2006

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